*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

WRIT PETITION Nos.4962 and 7858 of 2003; 28225 of 2005 and 25463 of 2007

% 12.09.2014

Between:

Toddy Tappers Cooperative Society,

And others.

… Petitioners

AND

The Prohibition & Excise Superintendent – cum –
Functional Registrar, TTCS, Nizamabad District,
at Nizamabad,
And others.

…Respondents

Counsel for petitioners: Sri T.Amarnath Goud
Sri S.Rahavender Goud
Sri M.Rajamalla Reddy
Sri Nandigam Krishna Rao

Counsel for the Respondents : Government Pleader for Excise
Sri Nandigam Krishna Rao
Sri T.Amarnath Goud

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? CITATIONS:

1. 2003 (5) ALD 393 (DB)

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.4962 and 7858 of 2003; 28225 of 2005 and 25463 of 2007

COMMON ORDER:

W.P.No.4962 of 2003:

Heard the learned Counsel for the petitioner, learned Government Pleader for respondent Nos.1 to 4 and the learned Counsel for respondent No.5.

2. The petitioner society was registered on 14.10.1993 under the provisions of the Andhra Pradesh Cooperative Societies Act, 1964. Its area of operation extends to 36 wards of Nizamabad Town. It was granted a licence to sell toddy in respect of Nizamabad area from 01.04.2002 to 31.03.2007 under licence dated 04.05.2002. The said society was allotted 11 toddy shops and they cater to the entire Nizamabad Town having 36 wards. The shops are not restricted to the wards in which they were located. While so, during November 2002, around 500 persons underwent test and 135 of them were found to be eligible tappers and the society resolved to provide them membership. In respect of another 200 persons, the first respondent issued proceedings on 03.10.2002 directing the petitioner society to admit 77 persons as members in view of the report of the SHO, Nizamabad, dated 15.09.2002. But, the petitioner society was not aware whether any test was conducted to the said 77 persons and, in fact, only 9 persons from out of 77 persons applied to the society seeking membership. The said 9 persons were given membership. The petitioner filed W.P.No.21609 of 2002 challenging the jurisdiction of the first respondent to direct the petitioner to admit members, and the said Writ Petition was disposed of on 17.03.2003 directing the society to consider the applications for membership and pass orders in accordance with law, within a period of one month from 17.03.2003. When steps were taken by respondent Nos.1 to 4 to form a new society and open new toddy shops in Nizamabad area in respect of the persons indicated in the proceedings

of the first respondent dated 03.10.2002, W.P.No.25349 of 2002 was filed, and the same was dismissed on 17.03.2003. The petitioner further states that there is no provision in Andhra Pradesh Cooperative Societies Act to have one more society of the same nature within the area of operation of the existing society. The Commissioner of Prohibition and Excise has no role with regard to the creation of a new society, but the Commissioner of Prohibition and Excise issued orders in CR.No.119/2003/CPE/E2 dated 18.03.2003 directing the Prohibition and Excise Superintendent, Nizamabad, to form a new TCS at Nizamabad with 67 members in the seven toddy shops. The said proceedings of the Commissioner of Prohibition and Excise, Hyderabad, dated 18.03.2003, is challenged in the present Writ Petition.

3. A counter affidavit is filed on behalf of respondent Nos.1 to 4 stating that one Sri Raja Goud and 198 others had submitted an application on 11.04.2002 seeking admission of membership in the petitioner society. They stated that their request for admission as members was rejected by the petitioner society on the ground that they were non-residents. The Excise Inspector concerned submitted a report dated 15.09.2002. As per the said report, all the applicants were residents of topes allotted to the petitioner society. Skill test was conducted by the Excise Inspector concerned on 03.09.2002, 10.09.2002 and 11.09.2002. Out of 199 applicants, 112 attended for the skill test and 77 persons were qualified. Clause 17 of the Excise (Toddy) Policy for the period 01.04.2002 to 31.03.2003 states as follows:

> "Steps shall be taken by every toddy tappers cooperative society located in Municipality/Municipal Corporation to enroll as regular members all such tappers who are entitled for tapping for them in rural areas where topes are situated and the trees earmarked for such society irrespective of the actual resident of such tappers."

4. The petitioner society refused membership to the applicants by resolution dated 06.06.2002 on the ground that they were non-residents and the said ground is not factually correct. In those circumstances, the first respondent issued proceedings dated 03.10.2002 directing the

petitioner to convene a General Body Meeting of TCS Nizamabad within 15 days and admit 77 qualified tappers as members according to the Excise Policy for the year 2002-03. The petitioner filed W.P.No.21069 of 2002 questioning the said proceedings. The petitioner also filed W.P.No.25349 of 2002 questioning the proposal to grant new TCS and new toddy shops at Nizamabad in the area of operation of the petitioner society. This Court, by order dated 17.03.2003, directed the petitioner society to consider the application for membership and pass orders in accordance with law within a period of one month from that date. W.P.No.25349 of 2002 was dismissed. Basing on the representation made by the eligible tappers who were denied admission by the petitioner society, the fourth respondent issued proceedings on 18.03.2003 sanctioning 7 new toddy shops in vacant wards of 3, 13, 20, 26, 31, 34 and 36 duly fixing ration and rentals. Based on the orders of the fourth respondent the first respondent registered the new society Nizabamad-2 with Presidency of Sri Raja Goud and other members on 20.03.2003. The petitioner was not affected by the formation of new society as the area of operation of the petitioner is not encroached nor the ration of the petitioner was reduced. Hence, the petitioner had no *locus standi* to question the formation of new society in the area of operation not covered by the petitioner society. As per the delegation of powers issued under G.O.Ms.No.234 dated 03.04.1979, the Excise Superintendent, being the functional Registrar of Toddy Tappers Cooperative Society, is empowered to register the society. Under the Excise (Toddy) Policy, the Government delegated the powers to the Commissioner of Prohibition and Excise to implement the policy guidelines. The contention of the petitioner that the area of operation of the society extended to the entire municipal area of Nizamabad is not correct. As per the Toddy Policy for the year 1996-97, the area of operation of TCS located in the Municipality is restricted to only to those wards where shops are located. After conducting the tapping test by the Station House Officer, Nizamabad, and submitting a report, the

Prohibition and Excise Superintendent, Nizamabad, had directed the petitioner society to admit 77 members who were found to be genuine tappers. But, the petitioner did not comply with the same and approached this Court by filing W.P.No.21069 of 2002, which was disposed of on 17.03.2003. In spite of the directions, the membership was not given to the eligible tappers. When the rejected tappers represented for formation of a new society in Nizamabad Municipality, proposals were submitted to the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, for sanction of the new society, fixation of rental and other levies etc.

5. The respondents relied on an order of this Court in W.A.Nos.1116 and 1117 of 2001, wherein it was held that if the Excise Policy was not contrary to the provisions of the Andhra Pradesh Excise Act, 1968, it has to be followed by the authorities. In view of the same, the Commissioner, Prohibition and Excise issued orders for establishment of 7 toddy shops by the fifth respondent with 67 members in the vacant wards. The counter affidavit further states that the Commissioner of Prohibition and Excise, being the over all In-charge of the excise administration in the State and the Chief Controlling authority in all matters connected with the administration of Andhra Pradesh Excise Act under Section 3 of the Act, has the inherent powers in the matters of grant of lease of existing toddy shops and creation of new toddy shops and lease of such shops to the tappers under TCS/TFT scheme within the guidelines issued by the Government. The policy for the year 2002-03 of the Government was extended up to 30th September 2003 vide G.O.Ms.No.50 dated 18.01.2003.

6. The fifth respondent filed a counter affidavit stating that the petitioner society is formed and is being managed by the contractors defeating the very purpose of tree for tapper scheme and the object of the tappers cooperative society. The members of the fifth respondent were actual tappers working in the petitioner society as daily wage

employees. Since the inception of the petitioner society, the services and hard labour of the fifth respondent were employed by the middlemen who promoted the petitioner society and they were making wrongful gain by defeating the purpose of TFT scheme as well as the object of TCS. 77 daily wage employees are working with the petitioner. They have been agitating for grant of membership for more than 7 to 8 years, though they were fully qualified and eligible to become members of the petitioner society. It is not correct to state that 11 shops which were allotted to the Petitioner society cater to the entire needs of Nizamabad Town i.e., all the 36 wards. The shops are restricted to the wards in which they are located. The members of the petitioner society are not dependent on the shops run by the society. It is true that the first respondent had conducted tapping test to some persons in September 2002 and found that 77 persons were eligible for membership and accordingly orders were issued on 03.10.2002. But, in order to create a rift among the eligible members, they wanted to provide membership to 10 persons only leaving the remaining 67 persons of their right to become members. In those circumstances only, the members of the fifth respondent approached the authorities for formation of a new society. The request of the members of the fifth respondent society had been pending since 15.06.2002. There is no ban in the Excise Policy for sanction of toddy shops. The shops, which were granted to the fifth respondent are not within the area of operation allotted to the petitioner. The fifth respondent had commenced operation of 5 shops out of 7 shops in the wards allotted to them on 25.03.2003, and the remaining shops would be opened on 26.03.2003.

W.P.No.28225 of 2005:

7. The case of the petitioner is that there are two toddy tappers societies in Nizamabad Town and they are arrayed as respondent Nos.5 and 6. When respondent Nos.5 and 6 did not give membership to the petitioner, he along with others filed an application to the first respondent and other respondents on 10.08.2004 requesting them to register them

as members of the Toddy Tappers Cooperative Society-II at Nizamabad. The request of the petitioner was recommended by two Hon'ble Ministers and in spite of the same the first respondent passed the impugned order on 17.01.2005 in Rc.No.973/Coop/2004, rejecting the request on the ground that there were already two Toddy Tappers Cooperative Societies at Nizamabad Town and there are only 36 wards in the Municipality; the toddy shops allotted to both respondent Nos.5 and 6 were 18; there is no suitable place for allocation of another toddy shop away from a distance of 2 kms to another existing toddy shop; and, the ration was also not available with a distance of 50 kms. Challenging the same, the present Writ Petition is filed.

8. The case of the petitioners is that the Nizamabad has become a Municipal Corporation with 46 wards, and there are no toddy shops in Nagaram, Seetaramanagar and Gayatri Nagar, Padmanagar, Kotagalli, Chandrasekhar Nagar and Gowtam Nagar, Kateshwar Bank Colony, New Housing Board, Hyderabad Road, Nizamabad, Vengalrao Nagar and Auto Nagar Malapalli. The said areas are situated at a distance of more than 2 kms from the existing toddy shops and hence, the reasons assigned by the first respondent are not correct. The first respondent is not permitting the formation of a new society at the instance of respondent Nos.5 and 6.

W.P.No.7858 of 2003:

9. This Writ Petition is filed challenging the proceedings of the third respondent dated 20.03.2003 sanctioning new TCS Group, Kamareddy No.II with seven toddy shops for being established in Kamareddy Town within the area of operation of the petitioner society, as arbitrary and illegal.

10. The petitioner submits that the petitioner society is an age-old society having its area of operation extended to the entire Kamareddy Town including its abutting Villages Devanpally, Sarampally,

Lingapuram, Tekrial, Paatha Rajampet and Devaipally. The first respondent, being the functional Registrar and Registering Authority, recognized the area of operation of the petitioner society and granted 13 licences in different wards of Kamareddy Municipality. Out of 13 licences, 9 licences were in respect of Kamareddy Town and the remaining four were in abutting Villages. There are more than 80 members in the petitioner society. The Prohibition and Excise Sub-Inspector, SHO, Kamareddy, had submitted a report on 25.11.2002 to the excise authorities stating that in the verification, the society was found to be genuine. While so, the first respondent issued proceedings dated 23.05.2002 directing the petitioner to enroll 77 persons as members. The petitioner filed W.P.No.24264 of 2002, and the same was allowed on 05.12.2002 holding that the respondents had no power under Section 19 of the Andhra Pradesh Cooperative Societies Act to direct admission of members. The petitioner further states that 30 persons applied to the petitioner seeking membership on 18.12.2002 and the managing committee passed a resolution admitting all the 30 persons as members. The petitioner held a general body meeting and expressed their willingness to provide membership to new persons. After disposal of W.P.No.24264 of 2002 on 05.12.2002 holding that the respondent was not having jurisdiction to direct admission of members, the respondent issued five TFT licenses to the third parties in respect of Devanpally Village toddy shop, for which the licence was already issued in favour of the petitioner up to 31.03.2007. The petitioner further states that the second respondent in his proceedings dated 19.07.2002 and the first respondent in his proceedings dated 06.08.2002 clarified that they were not vested with powers for bifurcation of the societies under the provisions of the Andhra Pradesh Cooperative Societies Act. When the petitioner came to know that the respondents were inclined to favour a group of persons enabling them to form a new society, the petitioner submitted its objections before the respondents on 13.12.2002 informing them that membership would be provided to the persons and not to

sanction new toddy shops. Challenging the action of respondent Nos.1 to 3 in sanctioning toddy shops in Devanpally Village under TFT licence and proposing to form a new TCS in Kamareddy, the petitioner filed W.P.No.24341 of 2002 and W.P.No.25613 of 2002, and they were disposed of by a common order dated 17.03.2003. Against the said order, W.A.No.509 of 2003 was filed and the same was disposed of on 26.03.2003 directing the first respondent/licensing authority to reconsider the licences granted and to take action if the petitioner society provided membership to the group of new persons. But, respondent Nos.1 to 3 allowed the fourth respondent to form a new society, even though they were not eligible to form a society. Challenging the same, the petitioner filed this Writ Petition as it is contrary to the guidelines 17 and 22 of the Excise Policy 2002-03 published in G.O.Ms.No.234 dated 03.04.1979 and the provisions of the Andhra Pradesh Cooperative Societies Act.

11. The fourth respondent filed a counter affidavit stating that the first respondent had not fixed any area of operation in relation to the petitioner society. The first respondent granted licence to the petitioner only in relation to few wards and the area of operation is confined to those wards only. Most of the members of the petitioner society are contractors and are not economically backward. It is not correct to state that the business of the petitioner society is spread to the entire Kamareddy and neighbouring villages, and the respondents permitted tappers of Devunipalli Village to establish a new society. The petitioner filed W.P.No.25613 of 2002 and the same was dismissed by this Court on 17.03.2003. The writ appeal, being W.A.No.509 of 2003, filed by the petitioner against the said judgment was disposed of on 26.03.2003 upholding the order of the learned single Judge. The petitioner had deprived the actual tappers from their right to have membership and the petitioner society is managed by contractors. The alleged grant of membership to 30 persons, who applied for membership on 18.12.2002, was a bogus transaction. They were not actual tappers, but they were the relatives of the members of the managing committee and their

henchmen. The guidelines referred in relation to the excise policy for the year 2002-03 under clause 22 was not mandatory and it was framed only for the administrative convenience of the authorities.

W.P.No.25463 of 2007:

12. The petitioners' case is that Medak Town has 27 wards and out of the said wards, in respect of 10 wards, licence was granted to the Toddy Tappers Cooperative Society, Medak. Most of the members of the said society are not tappers and are being managed by the contractors. Under the Tree for Tappers scheme the respondents have been granting licence to the genuine tappers. Tapping test was also conducted by the officials of the respondents to the petitioners and the petitioners were declared to be qualified as tappers through proceedings in Cr.No.1965/Coop/Sdpt/97, dated 02.07.1998 by the Assistant Commissioner of Prohibition and Excise, Medak District. The petitioners submitted applications to the Toddy Tappers Cooperative Society, Medak, for grant of membership under Section 19 of the Andhra Pradesh Cooperative Societies Act as they are qualified and eligible to be granted membership. But, the said society has not acted on the applications of the petitioners dated 12.08.2003 and hence they approached respondent Nos.1 to 3, who directed the society to consider the cases of the membership of the petitioners. Since the petitioners were agitating for membership, the management of the society attacked them, and in respect of the said altercation, Crime No.59 of 2003 was registered in P.S. Medak Town. However, the said case ended in acquittal. When the society did not admit the petitioners as members, they approached the official respondents for permission to form a new society in respect of the wards left open. Their application dated 06.08.2003 was rejected by the impugned proceedings in Cr.No.B5/1320/2004, dated 19.03.2005. Challenging the same, the present Writ Petition is filed.

13. The second respondent filed a counter affidavit stating that the Government framed comprehensive and consolidated rules under

G.O.Ms.No.1128, Revenue (Ex.II), dated 09.09.2007, and they are called, the Andhra Pradesh Excise (Grant of Licence to sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007. The same was notified in the gazette on 20.09.2007. As per the said rules, the fourth respondent is competent to fix the number of shops to be established in an area, their location, assignment of trees for tapping under Rule 3(2). The administrative instructions issued by the fourth respondent indicate that there shall be only one society for one village and one shop for one society. Since there is a society already existing in Medak Town, the request of the petitioners to form a second society was forwarded to the fourth respondent for suitable instructions, as the fourth respondent is the competent authority for sanction of the toddy shop. Accordingly, the fourth respondent vide Cr.No.B5/1320/2004, dated 19.03.2005, instructed the petitioners to approach the President, T.C.S.Medak, for their enrollment as members, as there was no provision for formation of another society within the area of operation of the existing society with the same objectives as per the Andhra Pradesh Cooperative Societies Act. Since the petitioners' grievance is that the existing society is not admitting them as members, they can approach the Tribunal under Section 76 of the Andhra Pradesh Cooperative Societies Act.

14. It is clear from the above averments that Nizamabad Town had originally 36 wards. Later on, it became Corporation and the wards have been increased from 36 to 46. The petitioner in W.P.No.4962 of 2003 was registered and the bylaws of the society show that the area of operation of the petitioner extends to 36 wards of Nizamabad Town. The petitioners in W.P.No.7858 of 2003 and W.P.No.25463 of 2007 were agitating for becoming members of the society and when they failed in their attempt, they formed new societies. The case of the petitioner in W.P.No.28225 of 2005 is that on upgradation of Nizamabad Town as Corporation there are 10 more wards not covered by the area of operation of the petitioner society in W.P.No.4962 of 2003 and hence

their application should have been considered in respect of the places not covered by the areas where there were no shops.

15. Learned Counsel for the petitioners in W.P. 4962 of 2003 submitted that when the area of operation of the society is indicated in the byelaws of the Society, no other Society shall be permitted to be formed and no new licenses should be issued to them. In any event, after the date fixed in the Excise Policy, no new licenses shall be granted. On the other hand, learned Counsel for the respondents submit that the Societies are permitted to do business in respect of the shops where licenses were granted and the area of operation is not the criteria. In respect of the shops to which the licenses were not granted, the authorities are entitled to grant licenses to the new shops. They further submit that by virtue of grant of licenses in respect of the new shops, the existing area of operation is not thereby affected. However, the respondents can always consider the grant of licenses for the areas, beyond the area of operation indicated in the byelaws of the society.

16. In view of these rival contentions, the points that arise for consideration in these Writ Petitions are:

1. What is the effect of “area of operation” indicated in the byelaws of a society registered under Andhra Pradesh Cooperative Societies Act in relation to the grant of licenses under the provisions of the Andhra Pradesh Excise Act and the Rules made thereunder?

2. Whether the area of operation is dependent on the licenses granted by the excise authorities in exercise of their powers under the provisions of the Andhra Pradesh Excise Act and the Rules made thereunder, and in respect of the shops to which licenses were not granted to the society formed already, whether the respondents can allow formation of some other

society?

3. Whether the Excise Policy framed by the Government from time to time has a binding effect even in the face of express provisions of the Andhra Pradesh Excise Act and the Rules made thereunder?

4. Whether the qualified toddy tappers, who seek membership in a Society, failing in their attempt to get themselves admitted as members of the Society can seek formation of a separate Society without availing the remedies open under the provisions of A.P.Cooperative Societies Act and without pursuing their right to become members?

17. A Society registered under the provisions of the Andhra Pradesh Co-operative Societies Act is a body corporate by the name under which it was registered having perpetual succession and common seal. When 'area of operation' is indicated in the byelaws of the Society, the said area can be divided only by bifurcating the society under Section 15-A of the Andhra Pradesh Co-operative Societies Act. The said Section says that if the Registrar is of the opinion that in respect of a Society or Societies in receipt of State aid as specified under Section 43 of the Act it is necessary to amalgamate or merge any Society with any other such Society or to divide and restrict or transfer the area of operation of a Society or to liquidate a Society, he may identify the viable and non-viable Societies which may be retained or divided with consequential restriction of the 'area of operation' etc. The consequences of such action were enumerated in the said Section. Section 16 deals with amendment of byelaws of a society.

18. In the above cases, the petitioner Societies were registered with specific areas of operation and if such area of operation has to be modified, necessary action has to be taken under Section 15-A of the Andhra Pradesh Co-operative Societies Act.

19. The contention of the respondents is that even in respect of the areas of operation, when no licenses were granted by the Excise Authorities in respect of some wards, the Registrar is competent to form a new Society or to allow another Society to sell toddy.

20. Learned Counsel for the respondents relied on a Division Bench judgment of this Court in **Toddy Tapers Co-operative Society, Sadasivapet, Medak v. Government of A.P**[1]. The point that was urged before the Division Bench was that as per the bye-laws of the petitioner Society, the area of operation extended to the entire Sadasivapet Municipality and the respondents could not have exercised jurisdiction under the Andhra Pradesh Co-operative Societies Act in issuing the order impugned in the Writ Petition permitting another Society to be formed within the same area which was within the area of operation of the petitioner Society. It was urged that such an order would amount to bifurcating the Society and without following the procedure laid down in Section 15-A of the Andhra Pradesh Co-operative Societies Act, such an order could not have been passed. It was also submitted that the order passed by the second respondent therein was not within his competence, since the Excise Superintendent, Medak District, alone had the authority and jurisdiction to pass such an order. The Division Bench noticed that the petitioner Society was formed on 24.10.1972 and its area of operation, as mentioned in the byelaws, was the municipal area of Sadasivapet and surrounding Villages of Siddapuram and Ishratabad. A part of the said area stood excluded subsequently when it was included in another municipal area. As per the Excise Policy for the year 1996-97, the area of operation of the petitioner Society stood restricted only to six wards since licenses were issued to the petitioner Society only for the six wards. The Division Bench noticed that the direction issued by the second respondent therein permitting the fourth respondent and others to form a new Society to operate in the

area, which is beyond the area of operation of the petitioner Society, does not amount to bifurcation of the petitioner Society. The Division Bench further held as follows:-

> "……..As noted earlier, Respondent No. 4 and others did approach the petitioner-society to admit them as members of the petitioner-society. Their request was turned down by the petitioner-society. On their representation, a proposal was mooted by the authorities for formation of a new society. Decision was ultimately taken permitting a new society to be formed within the same municipality but with restricted area of operation, **which is beyond the area of operation of the society**. There is no prohibition either under the Societies Act or under the Excise Act nor any provision was brought to our notice under which it is not permissible to form a new society within the same municipality but **for different areas of operation**. May be that at the time when petitioner's society was formed, under its bye-laws its area of operation extended over the entire municipality, but under the excise policy issued as far back in 1996-97, the area of operation of the petitioner's society stood restricted only to six wards. The remaining wards were not within the area of operation of the petitioner's society. In the absence of any statutory prohibition no exception can be taken to any of the actions of he respondent No. 2 in having granted permission for formation of a new society or in ordering a new co-operative society to be constituted for Respondent No. 4 and others. By the impugned order, the operation of the petitioner's society has not been restricted. It stood restricted in 1996 itself when the excise policy for the year 1996-97 was issued. Division Bench of this Court also in its order dated 1.7.2002 while dismissing the appeals had mentioned that the area of operation of the petitioner's society stood restricted in 1996. That part of the order of this Court was not interfered with by the Supreme Court and more over no challenge was made by the petitioner's society as regards the, reduction of its area of operation. Therefore, formation of new society does not amount to bifurcation as contended by the learned Counsel for the petitioner-society". (**emphasis supplied**)

21. The Division Bench noted that by the order impugned, the area of operation of the petitioner Society was not divided and it already stood reduced in 1996 by reason of the Excise Policy announced for the year 1996-97 itself. The Division Bench further held as follows:-

> "……Even otherwise also, the bye-laws of the petitioner-society cannot restrict the executive power of the Government to take any policy decision in the matter of formation of new societies for such area for which there is no licence issued in favour of any society or to amalgamate or merge any existing society with another one. The newly formed society has an independent existence and it has not been carved out from the petitioner-society."

22. Rule 2(b) of the Andhra Pradesh Excise (Tapping of Trees and Toddy Shops - Special Conditions of Licence) Rules, 1969 (for short, the 1969 Rules), defined "licence", and it reads as follows:-

> "'Licence' means a licence granted for the tapping of excise trees or drawing of toddy therefrom or the sale of toddy in retail under the Act and the term 'licensee' means the holder of such licence."

23. All the Rules in the 1969 Rules deal with tapping of excise trees or drawing toddy therefrom only and they do not deal with the licenses held by the Societies, though the Rules were subsequently repealed and new Rules called, the Andhra Pradesh Excise (Grant of Licence to sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007 were brought into force with effect from 20.09.2007. However, in these cases, the 1969 Rules alone are applicable. The licenses and the permits are dealt with under Chapter VI of the Andhra Pradesh Excise Act.

24. The 1969 Rules were made in exercise of powers conferred under Section 72(2)(d) of the Andhra Pradesh Excise Act. It deals with regulation of the import, export, transport, manufacture, cultivation, possession, supply or storage of any intoxicant and including the matters in relation to the regulation of tapping of excise trees, the drawing of toddy from such excise trees, the making of the same and the maintenance of such marks. Section 72(2)(e) of the Andhra Pradesh Excise Act deals with regulating the issue of licenses in the sale of intoxicants and the number of such licenses in any area. Obviously, the 1969 Rules do not deal with the formation of the Society or the area of operation thereof. Under the provisions of the Andhra Pradesh Excise Act and the Rules made thereunder, the issue of licenses can be regulated, but not the activities of a Society. The activities of a Society are regulated by the Andhra Pradesh Cooperative Societies Act and the Rules made thereunder. As a consequence, the Excise Policy cannot deal with the regulation of activities of the Society except with regard to the licenses.

25. The Excise (Toddy) Policy Guidelines for the period from 01.04.2002 to 31.03.2003 were issued under G.O.Ms.No.145 dated 28.03.2002. Guideline No.3 deals with the members of the Toddy Tappers Cooperative Society and it says that it should consist of not less than 80% of tappers. Guideline No.6 deals with splitting up or bifurcation of existing Toddy Tappers Cooperative Society groups wherever warranted as per Rules but not later than 31.05.2002 subject to the guidelines to be issued by the Commissioner of Prohibition and Excise. Guideline No.23 specifically states that, while granting permission for the formation of new Toddy Tappers Cooperative Society, the authority competent to issue permission *shall keep in mind the area of operation etc.*

26. In view of the specific guidance in Guideline No.23, the area of operation assumes significance. Nowhere in the guidelines was it stated that the area of operation of the Society can be reduced by denial of licenses to shops or by creating a new society.

27. As already stated above, the area of operation of a Society will be indicated in the byelaws of the Society and if the said area has to be restricted, it has to be done only by exercising the powers under Section 15-A of the Andhra Pradesh Cooperative Societies Act but not otherwise.

28. The Division Bench in **Toddy Tapers Co-operative Society, Sadasivapet, Medak**'s case noticed that the area of operation of the Society stood restricted only to six wards under the Excise Policy issued in 1996-97, and in view of those circumstances, it was held that the formation of a new Society was valid. Consequently, it was also held that it does not amount to bifurcation as contended by the petitioner-Society therein. Thus, the decision of the Division Bench is distinguishable on facts. The observations of the Division Bench that the byelaws of the petitioner Society cannot restrict the executive power of the Government to take any policy decision in the matter of formation of

new societies for such area for which there is no licence issued in favour of any Society or to amalgamate or merge any existing Society with another one, cannot be read in isolation. It has to be read in the factual setting of that case. The next sentence states that the newly formed Society has an independent existence and it has not been carved out from the petitioner-Society. Thus the said decision makes it clear that it was not a case of bifurcation and it was a case of formation of a new Society. In view of this, the area of operation indicated in the bye-laws of a Society registered under the provisions of the Andhra Pradesh Cooperative Societies Act cannot be restricted either by denial of licenses under the Andhra Pradesh Excise Act and the Rules made thereunder or by the Excise Policy Guidelines, which are mere guidelines.

29. A perusal of the Excise Policy issued under G.O.Ms.No.145 dated 28.03.2002 itself says that they are Policy Guidelines. They cannot be elevated to the position of a policy of the Government. They are intended for smooth exercise of powers vested in the authorities under the provisions of the Andhra Pradesh Excise Act. If there is any specific provision in the Act enabling the authorities or the Government to restrict the area of operation, such power can be exercised, but no such provision is available in the Andhra Pradesh Excise Act. As already stated above, the provisions of the Andhra Pradesh Cooperative Societies Act prevails over the provisions of the Andhra Pradesh Excise Act with regard to the functioning of the Societies and the latter enactment only deals with the grant of licenses and regulation thereof.

30. In all these cases, the unofficial respondent Societies made attempts to get themselves admitted as members, and having failed in their attempts applied to the authorities for formation of a new Society and the authorities allowed such formation. Though in some cases, the authorities stated that formation of Societies did not affect the area of operation, wherever they affected the area of operation of the petitioners'

societies, such formation cannot be held to be legal. If the respondents are aggrieved with regard to the denial of membership, they have other remedies open, including approaching the Tribunal under the provisions of the Andhra Pradesh Cooperative Societies Act. Instead of availing such appellate remedy, the respondents cannot, permit the formation of a new Society. Such an action cannot be allowed under the provisions of the Andhra Pradesh Cooperative Societies Act.

31. In W.P.No.4962 of 2003, immediately after disposal of W.P.No.25349 of 2002 on 17.03.2003, an order was passed by the fourth respondent on 18.03.2003 sanctioning seven new toddy shops to the eligible tappers and based on the orders of the fourth respondent, the first respondent registered the new Society at Nizamabad on 20.03.2003. The petitioner was not even allowed time to consider the application for membership in pursuance of the orders of this Court dated 17.03.2003, and the first respondent hastily allowed the registration of the new Society on 20.03.2003. The action of respondent Nos.1 and 4 is thus vitiated and it is contrary to Section 15-A of the Andhra Pradesh Cooperative Societies Act.

32. In view of the above, W.P.Nos.4962 and 7858 of 2003 are allowed; W.P.No.25463 of 2007 is dismissed; and, W.P.No.28225 of 2005 is disposed of directing the respondents to consider the case of the petitioners in respect of the shops beyond the area of operation of the Toddy Cooperative Society, Nizamabad. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

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(A.RAMALINGESWARA RAO, J)

12.09.2014

Note: L.R. copy to be marked.

B/o.

vs

[1] 2003 (5) ALD 393 (DB)